IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2108 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IRFAN MAJID KADAR MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2108 of 2002

MR RS SANJANWALA for Petitioner No. 1-2

MR ND GOHIL, APP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/06/2002

ORAL JUDGEMENT

1. By means of filing this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the petitioners have prayed

to quash and set aside the FIR being CR No.5076/2002 registered with Umargaon Police Station, District Valsad. The petitioners further prayed to quash all the proceedings initiated pursuant to the said FIR and also prayed to release the gur and the Tempo bearing No.GJV-720 belonging to the petitioner forthwith and unconditionally, on the grounds stated in the petition.

2. It is stated in the petition that FIR being CR No.5076/20002 came to be lodged against the petitioner no.1 with Umargaon Police Station, District Valsad. As per the said FIR, one Tempo bearing No.GJV-720, which was going from Silvassa, Dadra and Nagar Haveli to Golvad, Maharashtra was intercepted on the road from Vagaldara to Nadigam and searched on 25th March, 2002 by the police authorities and they found 50 tins of rotten gur each of 20 kgs. from the said Tempo and when the driver of the said Tempo was called upon to produce any pass or permit authorising his possession of rotten gur, he failed to produce the same. It is also alleged against him that the sample of gur was collected, which was sent for chemical analysis. Therefore, it is alleged against the petitioner no.1 that he found with the rotten gur as defined under Section 2(39)A of the Bombay Prohibition Act, 1949 (hereinafter referred to as 'the Act'), which is punishable under Sections 70A and 81 of the Act.

3. It is the say of the petitioner that the gur in question was despatched by petitioner no.2 in favour of Navin Jasraj of Golvad, Maharashtra having place of business at Golvad. The said gur was entrusted to Tempo No.GJV-720 for transportation from Silvassa, Dadra and Nagar Haveli to Golvad, Maharashtra. The copy of the invoice is produced at Annexure-'B' to the petition. It is also the say of the petitioners that they are holding valid license issued under the relevant laws applicable in the State of Maharashtra entitling them to do business in all kinds of jaggery. The said license is produced at Annexure-'G' to the petition. So, according to the say of the petitioners, they have not committed any offence within the territory of Gujarat State as the said gur was to be despatched outside Gujarat State at Golvad, Maharashtra. The Tempo was only passing through the territory of Gujarat State. Therefore, the petitioners have prayed for the reliefs to which reference is made in the earlier paragraphs of this judgment.

4. I have heard Mr.Sanjanwala, learned advocate for the petitioners, Mr.ND Gohil, learned APP for respondent nos.1,2 and 3 and perused the averments made in the memo of the petition and grounds set out therein and also the

documents annexed therewith. I have also gone through the relevant provisions of the Gujarat Through Transport Rules, 1966 and various unreported judgments delivered in similar cases by this Court, copies whereof have been supplied by Mr.Sanjanwala, learned advocate for the petitioners during the course of his submissions.

5. Having considered the submissions advanced by the learned advocates appearing for the parties, it can be said that in similar cases which are enlisted below, this Court has quashed criminal complaints and further proceedings :

(1) Special Criminal Application Nos.4 and 5 of 1986 (decided on 28-1-1986)
(2) Criminal Misc.Application Nos.774 and 775 of 1985 (decided on 1-7-1985)
(3) Misc.Cri.Application No.4763/98 (decided on 27-11-1998)
(4) Misc.Cri.Application Nos.2785/94, 2786/91, 2787/91 and 2788/91 (decided on 25-8-1993)
(5) Misc.Cri.Application Nos.3041/95 and 3044/95
(6) Cri.Misc.Application No.482/95 (decided on 10-2-1995)
(7) Misc.Cri.Application No.750/96 (decided on 13-9-1995)
(8) Misc.Cri.Application No.4392/99 (decided on 25-8-1999)
(9) Cri.Misc.Application No.4493/99 (decided on 25-8-1999)
(9) Cri.Misc.Application No.7606/99 (decided on 17-12-1999)
(10) Cri.Misc.Application No.7673/99 (decided on 21-12-1999).

6. There is no manner of doubt that the Tempo in question which was intercepted on the road from Vagaldara to Nadigam by the respondent no.2, which was loaded with 50 tins of rotten gur each of 20 kgs. was to be unloaded at Golvad, Maharashtra.
Moreover, as per the various documents, which are invoices produced vide annexures, the facts remain that the goods were to be unloaded at Golvad, Maharashtra. Therefore, it is obvious that the said Tempo was passing through the territory of Gujarat State. So far as the offence under Section 70A of the Act is concerned, if the rotten gur were to be manufactured or sold in Gujarat State then and then only the offence can be said to have been committed within the territory of Gujarat State. Therefore, I am of the opinion that the prayer made in this petition deserves to be granted and thereby the

offence registered vide CR No.5076/2002 with the respondent no.2 Police Station is required to be quashed and set aside by allowing this petition.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The FIR being CR No.5076/2002 registered with Umargaon Police Station, District Valsad is hereby quashed and further proceedings pursuant to the said FIR is also quashed. Rule is made absolute. Direct service is permitted.

8. While directing quashing of the FIR being CR No.5076/2002 and the proceedings pursuant to the said FIR, so far as the muddamal is concerned, following order is passed :

(1) The muddamal gur seized from the Tempo bearing No.GJV-720 in pursuance to the FIR being CR No.5076/2002 be released to the petitioner no.2 on giving his undertaking to the satisfaction of the Magistrate concerned that the accused shall not store or use or consume the said gur within the territory of Gujarat State and the same shall be taken to its destination out of the limit of Gujarat State.

(2) The petitioner shall carry the goods in question under the police escort to be given by the police authority at the cost of the petitioner no.2.

(3) The Tempo bearing No.GJV-720 shall be released in favour of the petitioner no.1 after proper verification.

(A.M. Kapadia, J.)

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